

**TOWN OF EAST FISHKILL  
PLANNING BOARD MEETING  
JANUARY 17, 2017**

Lori Gee called the meeting to order.

***Members present:***

John Eickman, Steve Caswell, Michael O'Brien, Lori Gee, John Cutler, Craig Smith; Michelle Robbins, Planner; Dave Ellis, Engineer; Pete Setaro, Engineer; Tom Wood, Attorney. Staff: Pam Baier, Clerk; Julie Beyer, Meeting Secretary. Scott Bryant, Engineer arrived at 7:39 PM.

The meeting began with the Pledge of Allegiance.

Ms. Gee stated that Teresa Golden is moving and the board has regretfully accepted her resignation. She thanked Ms. Golden for her service and John Eickman will be sitting in her place until such time as the Town Board appoints a new member to the Planning Board.

**CHAIRPERSON COMMENTS**

Ms. Gee announced that the next two dates were Tuesday, February 7<sup>th</sup>, 2017, and Tuesday, February 21<sup>st</sup>, 2017.

**APPROVAL OF MINUTES OF MEETINGS HELD:**

**August 16, September 6, September 20, October 4, October 18, and November 15, 2016**

**MOTION made by John Cutler, seconded by Craig Smith, to approve the August 16, 2016 meeting minutes. Voted and carried unanimously.**

**MOTION made by John Cutler, seconded by Craig Smith, to approve the September 6, 2016 meeting minutes. Voted and carried unanimously.**

**MOTION made by John Cutler, seconded by Craig Smith, to approve the September 20, 2016 meeting minutes. Steve Caswell abstained. Voted and carried.**

**MOTION made by Michael O'Brien, seconded by Craig Smith, to approve the October 4, 2016 meeting minutes. John Cutler abstained. Voted and carried.**

**MOTION made by John Cutler, seconded by Craig Smith, to approve the October 18, 2016 meeting minutes. Michael O'Brien abstained. Voted and carried.**

Ms. Gee stated the minutes for November 15, 2016 would be held over until the February 21<sup>st</sup> meeting to give everyone time to review them.

Ms. Gee stated that at this point there was nothing on the February 7<sup>th</sup> agenda and it is too late to submit for that meeting.

**MOTION made by John Cutler, seconded by Craig Smith, to cancel the February 7, 2016 meeting. Voted and carried unanimously.**

Ms. Gee stated the next two meetings would now be Tuesday February 21<sup>st</sup> and Tuesday March 7<sup>th</sup>, 2017.

**EXTENSION OF FINAL APPROVAL:**

**Alpine Industries Amended Site Plan, Route 82 (Original approval granted 1/5/2016)**

**Michael Gillespie was present.**

Mr. Gillespie stated they are looking for a one-year site plan extension. Ms. Gee asked where they were regarding their conditions. Mr. Gillespie stated they are working through them. The application was to construct a second building. The owner opened up upon the previous use that

was there to get the name out there. At this point he is looking to pursue the second building. Ms. Gee asked if Board of Health conditions were all met. Mr. Gillespie stated they had earlier received Board of Health approval.

Ms. Gee asked if anyone on the Board had questions or comments. There were none. She asked if any of the Town Professionals had questions or comments. They had none.

**MOTION made by Michael O'Brien, seconded by Craig Smith, to grant a one-year extension for this application. Voted and carried unanimously.**

**DISCUSSION:**

**Sprain Brook Meadows, 8 Lots, Townsend Road.**

**Dennis Lynch was present.**

Mr. Lynch stated the last time this application was before the Board was in 2013. At that time the floodplain had been re-designated from FEMA. Since then they have done a LOMA, which revised that floodplain. They are back before the board to bring everyone up to speed.

Ms. Gee asked the applicant to give an overview, as there were some new members on the board. She asked if the lot count was remaining the same. Mr. Lynch stated there were eight lots with six on the lower, southeast corner of the lot and two on the north. The remaining 77 acres are to be conveyed to an adjacent property. Their Public Hearing was adjourned in 2013 and they have received comments from Morris Associates and the planner. There are some updated materials that have been sent.

Ms. Gee asked if Mr. Ellis had time to review this and if there were any shared driveways. Mr. Ellis stated there were no shared driveways, just shared aprons. He has not done a site visit yet. His concern would be sight distance.

Ms. Robbins stated they have gone back and forth on these plans. Originally they had a storm water basin listed and then DEC stated they did not want the discharge into the wetlands. Now there is a basin back in that location. Mr. Lynch stated they need to revise the plans again. He stated more than likely that basin will get smaller or eliminated and everything will be handled on each lot. They may use rain guards and dry wells. Ms. Robbins stated that the Public Hearing was adjourned in June. There was a letter that was received in May expressing concern related to the storm water discharge and the applicant was sent back to the drawing board. The applicant decided to go back and revisit the Floodplain Analysis. Ms. Robbins asked for a copy of that Floodplain Analysis. She also stated that the EAF needs to be reflected to update all of the changes. The revised SEQRA documentation should probably also be re-circulated due to the DEC's involvement. She also stated that some of the backyards are up against the wetlands and the storm water basin is a large portion of one of the side yards. She asked if the DEC has been on site since 2004. Mr. Lynch stated he did not know. She stated they might need to get an update of the validation. In 2009 they flagged a few areas, but the line remained close to where it is so she does not believe it will move much. There does not appear to be any permits needed from the Army Corp of Engineers as long as the entire project related work takes place outside of the regulated Army Corps wetland boundaries. She's not sure if Army Corps has done a

jurisdictional determination at the site. Mr. Lynch stated they have not. Ms. Robbins stated the SEQRA letter that was received in 2012 indicated that the site has potential to contain "rich sloping fen", which is an identified sensitive resource and also there is the potential for the Bog Turtle and the Indiana Bat and the Blandings Turtle. A Habitat Assessment was done but she is unsure if it was sent to DEC. They need to have a copy to make sure they are in agreement with it. It can be included when they do a circulation. Ms. Gee asked which lot had the fen. Ms. Robbins stated she believed it was in the middle area. Ms. Gee asked if it was outside the building envelope for any of the development and Ms. Robbins stated she believed so. DEC will need to see the habitat assessment that was done. She stated that the site contains a perennial stream, which is a state protected, CT stream. It will have a buffer on it and they will need to stay outside of that buffer. She also noted that the traffic consultant might want to review the site distances from the driveways.

Mr. Setaro asked if the LOMA report had been submitted. Mr. Lynch said yes and it has been approved and he would supply a copy to Mr. Setaro. Mr. Setaro asked if the map is going to be updated to show the current floodplain and Mr. Lynch said yes. Ms. Gee asked if the study actually changed the BFE or if it just changed the line. Mr. Lynch stated it changes the line where it is. Mr. Setaro stated this area is a Zone A area, which is an unmapped area. FEMA did not do a detailed hydraulic analysis in this particular area. Typically if you are in a Zone A and have a project like this the applicant is required to obtain their own consultant to go through the process that they went through. Mr. Setaro stated there was some discussion regarding the storm

water pond. He needed clarification on the actual location of the pond. The pond was done to take care of the increase in flow due to impervious surface increase. Looking at the map he is unsure how you will get storm water from those four houses unless there cross easements on each lot for piping or swaling. Mr. Setaro spoke with Mr. Lynch and they will review this to see if there's some way to get rid of the pond and have each house deal with its own increase in storm water. Mr. Ellis asked if there were wetlands on the East side. Ms. Robbins stated there might be. Mr. Setaro stated that depending on where the hundred-foot buffer is they may need permits for the driveways. Ms. Robbins stated their wetland professionals should have the wetlands delineated and the buffer on the other side should be flagged. Mr. Setaro stated that Lot 7's driveway grading is very close to the buffer and he asked if it was possible to shift it away from that. Ms. Gee asked if there was a Cut and Fill Permit as part of this. Mr. Lynch stated he did not believe so. Ms. Gee asked if this was currently a single parcel and Mr. Lynch said yes. Mr. Setaro asked if the McGrath's have to be part of the application as land is being conveyed to them. Attorney Wood stated yes as this is not an approved lot it is just extra land being conveyed. Mr. Lynch stated they would amend the application to include him.

Mr. Ellis stated that when he spoke with Engineer Bryant, Engineer Bryant was unsure if the applicant had gone through the LOMA process.

Ms. Gee asked if there were any other questions or comments from Board members. There were none. Ms. Gee asked when the wetlands were last flagged and Ms. Robbins stated they were last

flagged by DEC in October of 2004 and AKRF inspected in October of 2009 and September of 2010 and did some reflagging.

Ms. Gee stated that if the habitat study has been accepted it needs to be provided to the Board. They will also need any drainage updates. Mr. Setaro suggested they contact the Highway Superintendent to make sure there are no issues with the driveway locations.

#### **DISCUSSIONS:**

##### **Hopewell Square Site Plan, Route 376**

**Timothy Allen was present.**

Mr. Allen stated that the Board has had the chance to visit the site since the last meeting. The applicant has made some amendments to the plan based on their last meeting and comments from the board, Morris Associates, and the traffic consultant. They have received more comments from Morris Associates last week. They would like to have a sit down with Mr. Setaro and go through some outstanding items. There is additional storm water testing to be done. They believe once that takes place they can come back before the Board and the 30 days for Lead Agency should be expired. They're looking for the potential of a Public Hearing in February. Ms. Gee asked if they circulated the plan for lead agency with the two buildings proposed. Mr. Allen said yes. Mr. Setaro asked if the 239M to the County was done yet, as they were waiting for elevations. Ms. Robbins stated the County has gotten information in the circulation. They will need to get the elevations. Ms. Gee asked when the elevations would be done and ready for submittal. Mr. Allen said they were just completed and have been before the ARB. They were

not available when they circulated for lead agency.

Ms. Gee stated the building layout had been changed due to some feedback. She asked if there were any other changes. Mr. Allen said no but they are working on the “T” intersection. They’re working on the diagrams to include the fire equipment. They will also meet with Rick Witt for storm water and drainage. Mr. O'Brien asked if what was presented to the ARB was the original building or did they make changes. Mr. Allen said the pictures before the Board tonight were the pictures seen by the ARB.

Mr. Setaro stated there would need to be a permit regarding the floodplain. The storm water discharge pipe from their infiltration system, the footing drains, and the fact that they are proposing a temporary sediment basin in the floodplain are all reasons why it will be needed. Mr. Allen stated the only permanent entity going into the floodplain would be the drainage outlet.

Ms. Gee asked if the restaurant building was two stories and Mr. Allen said yes. She asked if it was all going to be public space or some would be offices. Mr. Allen stated the intent is for it to all be restaurant but that has not been finalized.

Ms. Gee asked if Mr. Ellis had time to look at the truck turning radii. Mr. Ellis stated what was provided was a bus not the fire truck. They will double-check it. Mr. Ellis stated that the board representative should be privy to all discussions with DOT. He stated he thought there was

discussion about the exit being two lanes. Mr. Allen stated it is but that did not get transferred to the plans. The lead agency paperwork did have the two lanes. Mr. Ellis asked who was getting the parking closest to route 376. Mr. Allen stated it's for the upstairs tenant but that configuration might change once they T up the intersection. Mr. Ellis stated they would have to look closer at it as it could be a conflict. Ms. Gee asked if, with the potential change of use to the existing building, they have looked at the parking requirements and the possibility of land banking. Mr. Allen stated there leaving the parking as proposed. There is still the possibility that the daycare could move to the new building. They may move upstairs in the old building and used the whole existing building Ms. Gee stated then the parking requirement for the existing building would go down. They may be able to land bank some spots

Ms. Gee asked if they had the limits of disturbance for landscaping. They want to make sure there is screening between the new building and the neighbors. She asked if some of the existing trees were being left in place or if it would be only landscaping. Mr. Allen stated they would be putting it on the landscaping. One change from the original plan was that it showed landscaping along the highway. That has been eliminated because there is an easement there and they were told they couldn't plant there. They have added pines along the neighboring property to the South and have talked about the potential of the fence. Mr. Ellis asked what type of easement was there and Mr. Allen said it was an electrical easement. Mr. Ellis asked that the applicant provided trip generation schedule. He does not believe it's going to be significant for this property but would like it for the record.

Mr. Allen stated he realizes they do still have a lot of work to do but they would like to try to get the trees cleared as quickly as possible. Ms. Gee stated if this location is sensitive to Indiana Bats they cannot do clearing after March 31. Ms. Gee stated the 239M elevations need to go in so they can go back to the ARB. Ms. Robbins stated they could not give final ARB approval until SEQRA is completed. Ms. Gee stated she is concerned about the site circulation ingress and egress. There is the potential for a lot of cars coming in from a lot of different angles. Mr. Ellis stated that one good part is the circulation around the school is all going one way. The other side will have to be stop controlled also. Ms. Gee stated she would be concerned someone would be coming out of the new buildings, go across the entrance to go back to the school and there will be no traffic control there. Mr. Allen believes it will be all stop controlled.

Ms. Gee asked if there were any other questions or comments from Board members. There were none. Mr. Setaro stated his biggest concern would be getting the additional soil testing done to verify infiltration. That needs to be resolved before they consider a SEQRA determination. That would not stop the start of the Public Hearing process. He does expect that the actual percolation test will be okay but it does need to be validated. Ms. Gee stated they could start the Public Hearing at the end of February. Mr. Allen asked if the testing had to be "witnessed testing". Mr. Setaro will check with the town and let him know. Mr. Allen stated they have already done some soil testing on site and are very comfortable with those results.

**MOTION made by Michael O'Brien, seconded by Craig Smith, to schedule this**

**application to open a Public Hearing on February 21, 2017. Voted and carried unanimously.**

**MINOR MODIFICATION TO THE SITE PLAN:**

**Trinka Lane Plaza, Route 82/Trinka Lane**

**John DiDio was present.**

John Cutler recused himself, as he is the affected neighbor.

Mr. DiDio stated he is looking to put a generator on the back part of his property between the trees and telephone pole. Ms. Gee asked if anyone knew if Engineer Bryant had a chance to review the information. Mr. O'Brien stated they already have one generator that is very visible. Mr. DiDio stated this one is further in the back and more out of sight. Mr. O'Brien asked why after 30 years they felt it necessary now. Mr. DiDio stated it was just for peace of mind. They have only had one issue in 31 years that the blackout went too long.

Attorney Wood stated that the Town Engineer and the Planner have both reviewed this and visited the site and do not see any problems with it. There is a decibel rating on it and to the property line it should not be louder than a vacuum cleaner.

Ms. Gee asked if there were any questions or comments from the Town Professionals. Mr. Setaro asked if it would have a set time to run it's self-check. Mr. DiDio stated it could be set to whatever was convenient. Ms. Gee stated that should be set during weekday business hours.

Ms. Gee asked if there were any other questions or comments from Board members and there were none.

**MOTION made by Michael O'Brien, seconded by Craig Smith, to allow a minor site plan amendment to install a generator, which will be tested during weekday business hours. Voted and carried unanimously.**

**SKETCH PLAN REVIEW:**

**Criterion Ventures LLC (former Chadwicks Restaurant), Route 376**

**Dennis Lynch was present.**

Mr. Lynch stated that this is for a change of use for an existing structure. The site is on Route 376. It is a 1.6-acre site that has previously been a restaurant. There's parking to the north of the building and the west of the building. It is a two-story older home, which has been used for a restaurant. The applicants are looking to use this for Hudson Valley Behavioral Solutions, which is a company that works with autistic children on the spectrum for behavioral issues. They are currently located on Route 52 across from the IBM site. They're looking to move to this location with approximately 15 employees, but not have more than eight at a time on site. There will be 6-8 students at the site at any given time. Each session is approximately 1 to 2 hours per child.

Mr. O'Brien asked if there would be any structural changes to the building. Mr. Lynch said the exterior would remain the same. They will just be widening the driveway. Ms. Gee asked if this use would require the use of an elevator inside. Mr. Setaro said they would need to do an ADA review. She is unsure if there is an existing handicap ramp on the outside. Ms. Robbins asked if there was a specific handicap entrance to the building as they did mark out a handicap parking

space. Mr. Lynch said he believed there was. He's not sure if the building is up to current ADA requirements. He stated they would make any improvements required. Mr. O'Brien asked if they would be using the grounds, as there is a creek that abuts the property. Mr. Lynch stated that as of now there is no proposed outdoor use. Mr. Ellis asked if students would be dropped off throughout the day not all at one time. Mr. Lynch said yes. Ms. Gee asked if the students are just dropped off and Mr. Lynch said yes. Ms. Gee asked if they were proposing in loading or drop-offs. Mr. Lynch stated the students would be walked into the building so parents would be parking and walking them in. Ms. Gee asked if it would be all children being dropped off and Mr. Lynch said yes they would be between the ages of 2 to 15. Ms. Gee asked if it was all paved parking at this point and Mr. Lynch said yes. Mr. Ellis stated they should show turning movement for passenger vehicles. Ms. Gee stated they might want to designate drop-off parking spots. It does appear that they will have more parking than they need. Ms. Gee asked if they were going to leave it all there or if they were planning on pulling some of it up. Mr. Lynch said they would be leaving it as is. Ms. Gee asked if they were fully occupying the building or if at some point they would expect to have another tenant in there with them. Mr. Lynch said they would be the only tenants. He stated there is a third floor that will be used for storage only.

Mr. Ellis stated the sign that is there right now is in the New York State DOT right-of-way. That will need to be addressed and moved.

Ms. Gee asked what their hours of operation would be. Mr. Lynch stated they would have standard Monday through Friday business hours. There would be no overnights.

Ms. Gee asked Ms. Robbins if something like this would normally get referred to the Fire Advisory Board. Mr. Lynch stated they already had received comments from them.

Mr. O'Brien asked if they were going to be removing the commercial kitchen and Mr. Lynch said he believed so. They have received a letter from the Fire Advisory Board and their comments were to get a Knox box, a fire monitoring system, that the refuse enclosure must be 35 feet from the building and if the third floor is occupied a second route of egress must be provided. They have no intention of using the third floor at this point. Ms. Gee asked if there were two methods of egress from the second floor. Mr. Lynch was unsure. Ms. Gee asked if there were any other changes other than the possible ADA changes and Mr. Lynch said not at this time. Ms. Gee asked if the Department of Health requirements for a restaurant would be more intensive than for this proposed use and Mr. Lynch said yes. She asked if he had started the process with water and septic and he said not at this point.

Ms. Robbins asked if they were proposing any additional lighting outside. Mr. Lynch stated they are not planning any additional lighting at this time.

Ms. Gee asked if Mr. Lynch have any additional questions for the Board. He asked what their next step would be. Ms. Gee stated when they're ready to submit the full application they will be put back on the agenda for another discussion.

**REFERRAL FROM TOWN BOARD:**

**Rezone Request for Stoneridge Commons**

**No one was present.**

Ms. Gee stated that Ms. Robbins had drafted a letter for the board to review. She stated she believed there were a few comments from the original draft and she asked if there was any additional feedback, as they needed to respond back to the Town Board as soon as possible. Mr. O'Brien asked if there was any further information on what the use would be. There was no answer. Ms. Gee asked Ms. Robbins exactly how it would work if they came in for a change of use before the building had been constructed. Ms. Robbins stated if they change the zoning a SEQRA review would have to be completed listing any uses for that new zone that was being adopted. The Town Board would be conducting the SEQRA review. Attorney Wood stated they would do a SEQRA review for the rezoning but there is currently no application before the board other than the rezoning. If this goes through and the SEQRA is complete and the Town Board approves the zoning the site still has the approved uses that the Planning Board has previously approved. Any change to that would then have to come back to the Planning Board for site plan modification. Ms. Gee stated that the feedback from the Planning Board should be that they felt the use of the B1A zone was correct at the time so a change to a B1 would be important for the Planning Board to look at who the tenants would be, what their hours of operation would be, what the nature of the business is, and especially the traffic generation, as that Route 52 corridor already has traffic that backs up, to make sure that it is mitigated appropriately.

Ms. Gee asked if anybody needed additional time to provide additional feedback to Ms. Robbins or could they tell her to go ahead. No one had additional feedback. Ms. Gee thanked Ms. Robbins for drafting a letter.

**REVISION TO NEGATIVE DECLARATION:**

**GlobalFoundaries US2LLC, 8 lot Subdivsion and IBM Groundwater Remediation System**

**Kate Roberts was present.**

Michael O'Brien, Craig Smith, and Steve Caswell recused themselves.

Ms. Roberts stated they are requesting confirmation of amendments to the Negative Declaration in regards to the letter they drafted. Ms. Gee stated that due to the staffing and recused members they did not have a quorum for this item and therefore cannot take any actions. Due to a Board member's resignation, they also will not have a quorum in February for this. Ms. Gee stated they did not need to have a quorum in order to have a discussion.

Ms. Roberts stated she would run down what they believe to be the most important items in the letter that was sent. IBM has been discharging water into the Gildersleeve for over 35 years. Pursuant to the state mandated remediation and SPDES requirements the purpose of the amendments of the Negative Declaration are to guarantee that IBM will continue to have the ability discharge into the Gildersleeve regardless of what happens with IBM and

GlobalFoundries. GlobalFoundries and IBM have signed a letter of intent to continue their current reuse of IBM's water. Ms. Gee asked if they had a final agreement yet. Ms. Roberts stated there has not been a final agreement submitted yet. She believes that the Board asked for a letter of intent stating the reuse by GlobalFoundries of IBM's water is submitted and that is what the letter of intent is. Ms. Gee stated that the Negative Declaration for IBM and Global stated that there would be a new agreement that would be submitted to the Board and the final approval for GlobalFoundries also had that as a condition. She stated that as they move towards the approval for IBM she would assume that same condition would be there. The Board needs to make sure the agreement is in place. She asked if the old agreement had expired. Ms. Roberts said it has not expired. There was a letter of intent that stated they would continue that three-year agreement and she does not believe that has been signed yet. She stated that IBM is completely willing to continue to give GlobalFoundries the 1.0 mgd of water that they have been. It is more a matter of if GlobalFoundries is going to consistently except that water in the future. Ms. Gee asked if there was ever a situation where it had not been accepted and Ms. Roberts said no. She stated they are not expecting that issue but they need to be prepared for the possibility that GlobalFoundries seeks water elsewhere and that IBM would have the ability to continue its remediation. The entire purpose of the site plan application submitted was to separate the infrastructures and have the ability to discharge and monitor separately if the need were ever to arise. Ms. Gee stated that it was made clear to the Board that they were subdividing the property and that there would be potential other uses of the property and that IBM needed to have its building separate for monitoring and treatment purposes. It was not brought up during the public

process that they also needed to be able to discharge. The public process that they closed and issued their SEQRA findings on and the Negative Declaration that is currently out there was very specific to say that based on the public process the water would be shared. There was some concern raised about if manufacturing were to shut down for a short amount of time, they would have to do something. She believes there was a request to be able to grant on an emergency basis the ability to discharge whatever you need to maintain water treatment capability while the manufacturing process came back online. The only other thing that was discussed during the public process was that the water would be shared until such time that Global is not manufacturing anymore. There was no timeframe on that. The Board's expectation and understanding during the public process was that the water that is currently being discharged, the level and quantity, would not change with the application each party submitted. She asked Ms. Roberts if what they should have heard during the public process was that they expect it to continue but there is a chance that it won't continue or that IBM or Global might elect to separate their relationship and that IBM needs the ability to discharge separately. At that same time Global may still be manufacturing. She stated that to her it implies that the water that IBM contributes right now which is somewhere between 600,000 to 1,000,000 gallons per day might be discharged separately from what is currently happening. That would be a net increase to the existing current quantity. She stated that's where she has a concern that what was stated during the initial SEQRA findings are different than what is being described now. Ms. Roberts read part of a letter that stated that if the treated groundwater is treated and not delivered to GlobalFoundries for reuse it will be discharged to the storm sewer system that flows to the

Gildersleeve directly. That was touched upon in the Public Hearing. Ms. Gee asked if Ms. Roberts agrees that during the public process that on several occasions both applicants agreed that they had no intent to increase or change the quantity of discharge. Ms. Roberts said yes and that is the anticipated outcome of this. This is for the case that GlobalFoundries decides not to accept IBM's water. IBM just needs to be sure of the ability to discharge the baseline .6 condition that they have been pumping and re-mediating for years. Engineer Bryant stated it has not .6 for years it is up over 1,000,000 gallons per day for years. They have not yet demonstrated that it will only be .6. It has not been .6 yet according to any of the documents that the town has been given. Ms. Roberts stated that IBM is currently pumping 1.0 mgd water to meet the needs of GlobalFoundries. For the remediation needs IBM could go down to 0.6 mgd. They are over pumping essentially to give global the extra water that they need. Ms. Gee stated that was not expressed during the public process. Ms. Gee stated that there have been some conversations with the Professionals and it was stated that if IBM needed emergency rights for up to a 90 day, that could be added to the Negative Declaration. They felt that was keeping with the spirit of what the public disclosure was. If the request is truly to be able to separate the two systems, the GlobalFoundries system and the IBM process that would be a significant increase to today's quantities of water. She stated they would probably need to consider additional information to be added to the record and that they could review. She stated they might also need to start the SERQA process again. Then they could amend the Negative Declaration. Engineer Bryant states he feels that is different from what the people heard at the Public Hearing. Ms. Gee stated the Board knows there are water issues downstream and what hasn't been established is whether a

separate discharge would be a change of 1/8 of 1 inch of water height for one hour a day or whether it would change the creek height by a foot for three hours a day. The Board had asked initially for additional information and both applicants stated that they were not changing the water discharge. She stated what Ms. Roberts is saying does make sense but it may mean they need to go through a new SEQRA process to identify all of the information and then to make a judgment whether it has to go back to another Public Hearing. She stated that due to the concerns they heard during the first Public. She does feel that it will need to go that route. Ms. Roberts stated that the FEAS that was originally submitted with IBM's application does include studies from Chazen over a 20 year period. They did analyze that 16 mgd could flow into the Gildersleeve with no adverse impacts. Engineer Bryant stated that during the Public Hearing people spoke up about impacts they are having and not all of the information in those studies may not be true. There are properties being jacked up and properties being purchased by FEMA due to water problems. There are downstream impacts that need to be evaluated. The perception that people walked away from is different than what the Board is hearing out. Ms. Roberts stated that the studies do state that the Gildersleeve does go into a larger body of water and that larger body of water is what impacts the flooding. Engineer Bryant stated that because there is an existing flooding condition does not make it okay to dump more water into it. Ms. Roberts stated that they believe the contribution from the Gildersleeve is so minor that the increase of .6 mgd would not have an impact on the larger water body. Engineer Bryant stated he believes there are some inaccuracies in that report that need to be cleaned up. Ms. Gee stated they did not complete that part of the prior SEQRA because both parties represented that there would be no change.

Ms. Gee stated she does not believe that the Planning Board has any issue considering what is being asked for. They just need to see studies and have the chance to review them to make sure they have accurate information. She stated that the issue with amending the Negative Declaration the way that IBM is asking for it right now does not support the record of the original. They need the opportunity to give closer inspection to the information that has been provided and to make sure they do not need additional information. Ms. Roberts asked if they anticipated that could be done over the course of the next few weeks. Ms. Gee stated if they need to go back to a Public Hearing than no. There are notice requirements that need to be met. She does believe that over the next couple of weeks the Town Professionals can get together with the Planning Board members that are able to vote and provide information and then they can get back to the applicant so they know what is needed also. Ms. G stated the next meeting where they would be able to vote on this would not be until March 7. She does not want to wait until March 7 to inform the applicant that they need additional information. Attorney Wood stated that the public hearing was really on the site plan and subdivision application. There was not a separate SEQRA Public Hearing but they did accept comments as part of the subdivision site plan on the SEQRA review documents. He stated that under the SEQRA rules and procedures there is no requirement for an additional Public Hearing. The Board might want to consider having March 7 advertised for any public comments on any additional documents that are received by the Board. It would be more of an informational situation but it does have some public notice so that people may come in and submit comments. Ms. Gee stated she is sensitive to the applicant's time concerned that this is a conversation they had months ago. Ms. Roberts stated there have been so many

conversations off-line over the past few weeks that they thought this was going to be resolved. They're looking for what they need to do to get this done as quickly as possible. Ms. Gee asked Engineer Bryant how much time would be needed to go through information provided by the applicant and to go back through the original application and reports. Engineer Bryant stated a month would be fine. Ms. Gee stated she does not believe they have anything from the applicant that shows that the 600,000 gallons a day would be their average if they were discharging on their own and not sharing. The lowest year was over 700,000. Engineer Bryant stated they do not have the document that shows how they get from over 1 million down to the 600,000. Ms. Roberts stated IBM conducted optimizational testing and she will provide whatever she can get. Ms. Gee asked if the SPDES permits were renewed or if they were still in process. Ms. Roberts stated they are in the process of renewing the application. The permit is administratively extended until January 29 but they are willing to extend it further while they get this resolved. The actual permit application information has been attached for the Board to review. Ms. Gee stated that there was one permit for 600,000 gallons a day and one for 1,500,000. She always hears the 1,500,000 referenced as the Storm Water Permit. It seems like the permit they're looking to use for the treated water. She asked if that permit was being modified. Ms. Roberts stated they will be modifying a permit. The present SPDES permit that is in place now has no storm water discharge. Is only monitoring conditions. In the new application they requested a discharge of 1.5 million gallons of groundwater as well as storm water. Ms. Gee asked if that was a total of three or a net total of 1,500,000. Ms. Roberts stated it is a net total of 1.5 out of Outfall 004 but also the 6.0 out of Outfall 001. Ms. Gee stated then the total of 7.5 million per

day would not be changing. Ms. Roberts stated that it would be renewed for groundwater and also for storm water. Engineer Bryant stated they are also looking to add treated groundwater at Outfall 42 and that is not on the original information. Ms. Roberts said that was correct. She stated that is not included in the present application for the SPDES renewal. The application was submitted before Outfall 42 was created. IBM plans on seeking a separate SPDES to allow for discharge out of Outfall 42. Ms. Gee asked if that would then increase the 7.5. Ms. Roberts stated she believes it is incorporated into it. Engineer Bryant stated it says it needs to be added but it doesn't speak on the volume at Outfall 42. Ms. Roberts stated that application has not been submitted yet. She believes the discharge from 42 will be incorporated into the 1.5 from Outfall 004. Ms. Gee asked if it was going to be a separate permit and Ms. Roberts said she thought so. Engineer Bryant stated they need to clarify that. Attorney Wood stated that any additional discharge would be analyzed by DEC in determining whether or not they can get the SPDES permit. Ms. Gee stated she did not know if the DEC has a process to include the residents like the Planning Boards process does. Engineer Bryant stated he believes their process is just a legal notice in the paper. Ms. Gee stated that the professionals would meet with the applicant or speak with them a few more times once they've had a chance to review all of the materials. They will document in writing any additional information that is required. Attorney Wood stated that under the rules of necessity the Board could make a motion regarding advertising for a public information session.

**MOTION made by John Cutler, seconded by John Eickman, to schedule IBM for a public informational hearing on March 7, 2017. Voted and carried unanimously.**

Ms. Gee asked Attorney Wood if the notice requirements for an informational hearing were the same as a Public Hearing. Attorney Wood suggested doing the usual 10 days notice

Ms. Robbins asked if there were different requirements for monitoring regarding the discharge from Outfall 4. Ms. Roberts stated she believes it is the same. Ms. Roberts stated she would speak with Dean. Ms. Gee stated they anticipate opening and closing the informational meeting in one night, as it is not something that can be adjourned. They do need all the information to be considered prior to that. Engineer Bryant asked for the document that shows the lower gallons per day and clarification on Outfall 42. Ms. Gee said they need the SPDES application also. Ms. Gee stated she appreciates the applicant allowing the Board extra time due to their quorum issues. She said she wants to be able to provide the applicant with a written list of all additional information required.

Ms. Gee asked if there were any other items for discussion for the night. There were none.

### **ADJOURNMENT**

**MOTION made by John Eickman, seconded by John Cutler, to adjourn the Planning Board meeting. Voted and carried unanimously.**

Respectfully submitted:

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Julie J. Beyer, Meeting Secretary  
East Fishkill Planning Board